



## Is it time to sell?

### Part 6: Offer Selection

In part 5, I addressed the marketing process you and your agent will go through. In this installment I will discuss selecting or countering offers in order to get “into contract”. You are “in contract” (and obligated to sell under certain conditions) when both parties have executed a purchase agreement. This is a crucial step in selling your property. You give up the ability to change your mind because as long as the buyer fulfills its duties under the agreement you must sell your property on the terms agreed.

- \* There is usually a lot of give and take in negotiating an acceptable purchase agreement. Invariably there are many moving parts that are all worth consideration in light of the goals you have set for yourself. Important factors include how many other offers you have received, how they are priced, what other comparable properties are being offered for sale at the same time as yours, and how important it is for you to sell quickly. There is often a trade-off between a fast and sure sale and getting the highest price. For example, you may well want to accept a lower price from a Buyer who will pay all cash with few or no “contingencies”, and who will close in 30 days or less.

While it is tempting to deal only with the highest offer, a dialog with multiple parties and a full analysis will leave you in a much better negotiating position and will also give you better backup buyers in case your first choice does not perform.

Some of the desirable aspects in an offer include the following (these are not only items to look for and solicit as a Seller, but may also be items to include as a Buyer to make your offer more attractive):

**A pre-qualification letter.** This is a letter from a Lender stating their general interest in lending to a particular individual for the purchase of your property. Generally, this is by not an iron-clad commitment. Particularly with 5+ unit properties, there are many issues that may arise and cause the lender to deny the loan. The only certainty most pre-qualification letters brings is that the Buyer has talked to a lender, and probably shown them the information on the property.

**A short due diligence period.** This is the period where the buyer can back out (cancel) the transaction for any reason or for specified reasons, e.g. an inability to obtain financing, or unfavorable results from inspections. Some buyers will ask for 30 days or more, but more often 10 to 21 days is acceptable. A word of caution to “contingent-free” offers: when someone buys a property without doing inspections it can seem very attractive to a Seller because they feel they will have a “sure-deal” and because the deposit will be “non-refundable”. I do not advocate such offers—ever. If your Buyer has not seen what they are buying then what are they relying on? You certainly don’t want them to buy based solely on your information or that of your agents. Resist the temptation to agree that the Buyer has no right to do any inspections—even if they sign something saying they are not relying on your information. Obviously, where there are competing offers, and where the Buyer has taken care to do inspections prior to making an offer, this advice may be different.

**A large deposit, that goes into escrow quickly.** This is one of the ways to attempt to avoid transactions which are dragged out indefinitely, keeping the property off the market while the Buyer tries to cut a better deal.

**A “quick cancel” clause.** If the buyer is not performing his/her obligations, you want to be able to cancel escrow quickly.

**An acceptable purchase agreement.** Many buyers use the CAR (California Association of Realtors) form. With any purchase agreement you should at least consider using an attorney. Real Estate agents often are forced to change clauses in purchase contracts, but an attorney is the appropriate professional for this, and certainly is more accountable to you for his or her professional legal opinion. If you have unanswered questions, spend the few hundred dollars that may save you thousands later.

There are various other desirable attributes in offers that are rarely included. A cover letter detailing the Buyer's ability to manage the property is a plus. The bank will be more likely to lend and the Buyer more likely to buy if they understand the property and the market and have experience in the area.

If there is any doubt as to Buyer's financial strength, and if the Buyer is willing, copies of bank statements showing that they have ready cash are helpful. Unfortunately, some buyers rely on a partner, friend, etc. for part of the down payment. When that “partner” changes his or her mind you are left starting over. Most banks will also want proof that the Buyer will be able to post the agreed down payment.

In this heated real estate market, many buyers are getting prequalified, but many lenders can't take the time to properly underwrite the property, so **they may provide a pre-qualification letter that is based on a cursory analysis.** . It is appropriate and should be acceptable for your listing agent to have a conversation, or conference call with the lender to see if they have seen the property, seen the marketing information and income and expense information, and what chance they really have of delivering the loan that the Buyer needs.

With many people performing **1031 (tax deferred) exchanges**, it is important to know if your buyer contemplates such an exchange. There is exchange language that should be included in the contract, but also it is important for you as the Seller and your listing agent to understand their sale of their “downleg” (relinquished property). Have they sold it or is it only on the market? If it is sold, have contingencies been removed? If escrow has closed, then they should be able to show you evidence of the funds that should be with an exchange accommodator.

If you have many acceptable offers, consider a multiple counter-offer which guides the buyer towards a more acceptable offer. There are no guarantees, but in the end, the more you know about the buyers, the higher the probability that you will have a successful close of escrow. It should always be remembered that buyers may renege even on iron-clad, contingency-free offers. The fact that you have a legal remedy is not much comfort in such situations. It is far better to have done your investigations beforehand. Price is only a part of the equation: ability and willingness to perform is if anything more important.

*Please keep in mind that my area of expertise is Real Estate Brokerage. The tax consequences, exchange validity, accounting rules and legality of various strategies are best discussed with the appropriate professional. I have several that I will be happy to recommend. If you missed last month's installment, you may contact me for a copy of the last issue.*

*James Kilpatrick: Direct: 510-844-3647 or Cell: 510-290-9647*

*Email: James@JamesKilpatrick.com*